Rep. 709, 108 Pac. 649. We think there is equally strong ground to hold, by analogy, that the duty of the citizen to act for the preservation of society itself by helping to pursue and take criminals into custody, is none the less urgent and controlling. Public policy forbids that contracts should be given a construction tending to discourage that sense of duty which should, in either case, be instinctive with every citizen. For that reason, the risk incurred in the performance of such duty does not, as a matter of law, constitute 'exposure to unnecessary danger,' but in every case arising under such conditions it will be for the jury to say whether the insured exposed himself so wantonly and recklessly as to have subjected himself to needless risk."

Banks and Banking—Liability for Loss of Valuables Taken for Safe Keeping.—In Trustees of Elon College *v.* Elon Banking and Trust Co., 109 S. E. 6, the Supreme Court of North Carolina held that where banks have solicited and taken Liberty Bonds and other valuables for safe-keeping, they owe a duty of the care that a prudent and diligent banker would give his own property of like value and importance.

The court said in part: "It is thus well said, in an interesting note by the late Judge Freeman, to be found in 38 Am. St. Rep. 773:

" 'A very important part of the business of every bank, whether private or incorporated, consists of acting as an agent or bailee for its customers.'

"It was at one time held by some courts that such services were outside the scope of authority of banking institutions, but all doubt about their propriety has been removed by such well-considered opinions as First National Bank of Carlisle *v.* Graham, 100 U. S. 699, 25 L. Ed. 750, and Third National Bank *v.* Boyd, 44 Md. 47, 22 Am. Rep. 35. While it is a general rule that an accommodation bailee is liable only for gross negligence, the courts in nearly all recent cases have held that a stricter degree of care is required of banking institutions receiving articles of more than usual value, and holding themselves out as having special facilities for their transmission and safe-keeping. In fact, they are not accommodation bailees, for while a bank 'may not receive any direct compensation for its service, it obtains advantages therefrom in attracting and retaining clients.' Note, Isham *v.* Post, 38 Am. St. Rep. 781. In the case of Levy *v.* Pike, 25 La. Ann. 630, the court discussing a case somewhat similar to this, substantially said:

" 'Their object was doubtless to increase their deposits, and, of course, enhance their profits; and to accomplish it they held themselves out to the business community as prepared to take care of their valuable boxes. The taking care * * * of these boxes was a part of the business of the bank, by which they doubtless induced cash deposits and made considerable profits. We, therefore, do not regard the deposit in question as only a gratuitous one. Something

more than no gross negligence or fraud was expected from the defendants. * * * They were bound to exercise such diligence as prudent bankers would exercise in taking care and preserving a thing of that character deposited with them.'

"Since banks hold themselves out as having unusually safe and convenient means of transmitting and keeping Liberty Bonds and other valuable securities as well as money, and since such institutions at such small cost can obtain indemnity that will absolutely protect them, the courts have come to apply to them a measure of liability which has been invited by them, to wit, the rule of the ordinary prudent man in like circumstances; or, to be more specific, the care that a prudent and diligent banker would give his own property or securities of like value and importance. As has been said, the assertion that banks are liable for gross negligence only is well calculated, if generally accepted as such, to thwart the only purpose for which such a deposit is ever made. Banks are instituted, and their buildings constructed, for the delivery in, and safe-keeping of, money and money securities; and these bonds were deposited in defendant's bank for greater security of the bonds; that is, for safe-keeping. Whitney *v.* National Bank, 55 Vt. 155, 45 Am. Rep. 598; Isham *v.* Post, 141 N. Y. 100, 35 N. E. 1084, 23 L. R. A. 90, 38 Am. St. Rep. 780, and note. Schouler, in his recent work on Bailments and Carriers (section 85), after stating that a gratuitous bailee is liable only for slight care and diligence, according to the circumstances, and cannot be held for loss or injury, unless grossly negligent, says:

" 'This statement of the rule, though strongly buttressed upon authority, fails at this day of universal approval in our jurisprudence.'

"The same author says that what is negligence or gross negligence depends largely upon the value of the property, and upon business usage, and the attendant facts. This court, in Hanes *v.* Shapiro, 168 N. C. 24, 84 S. E. 33, treating of this question, brings our state into line with the majority of jurisdictions, by saying:

" 'But, in the last analysis, the care required by law is that of the man of ordinary prudence. This is the safest and best rule, and rids us of the technical and useless distinctions in regard to the subject.'

"And this case is quoted with approval in Perry *v.* Railroad, 171 N. C. 158, 88 S. E. 156, L. R. A. 1916E, 478. It is evident that the so-called distinctions between slight, ordinary, and gross negligence over which courts have perhaps somewhat quibbled for a hundred years can furnish no assistance. Maddock *v.* Riggs, 106 Kan. 808, 190 Pac. 12, 12 A. L. R. 221. The care must be "commensurate care," having regard to the value of the property bailed and the particular circumstances of the case. Hanes *v.* Shapiro, supra.

"The Supreme Court of the United States, in the case of Preston *v.* Prather, 137 U. S. 604, 11 Sup. Ct. 162, 34 L. Ed. 788, held that banks, acting as bailees, without reward, in the care of special deposits are bound to exercise such reasonable care as men of common prudence

bestow upon the protection of their own property of a similar character. The theory that the bailee's care of his own property is a satisfactory test of his duty to a bailor has also been rejected. It is now the law that the bailee must take such care of his property as prudent and careful business men generally take of property of like value and importance. Any other rule would put a premium upon negligence and carelessness. The modern rule is well stated in Maddock *v.* Riggs, 106 Kan. 808, 190 Pac. 12, 12 A. L. R. 219, and is, in substance, this: That while many respectable authorities may be found which regard such a showing as the true test in determining whether there has been gross negligence, the better rule is that taking such care of the property, or thing, as of one's own, repels a presumption of gross negligence; but this may be overcome and liability fastened upon the bailee, nevertheless, by showing the failure to exercise the care that under all the circumstances was required of him, because, manifestly, one may take risks with his own property that he has no right to take with another's, and because it is not a question of the care exercised by him as an indvidual merely, but as one of a class. In 3 R. C. L. at page 102, it is well said that a gratuitous bailee will not be permitted to absolve himself from all responsibility for the care of an article bailed, merely by proving that he has been likewise grossly negligent with his own goods. See, also, 6 C. J. 1119, §§ 57 and 59.

"In Boyden *v.* Bank, 65 N. C. at page 19, is found an expression which is relied on by defendant, that a bank "is bound only to keep a [special] deposit with the same care that it keeps its own property of a like description." Of course, the court did not mean to make the bald statement, that a bank can be negligent with its own property, and be excused from responsibility for that of another, because the latter was held by it as bailee and dealt with in the same manner as was its owner. In the old case of Doorman *v.* Jenkins (1834), 2 Ad. & El. 256, 111 Eng. Reprint, 99, 4 Nev. & M. 179, 4 L. J. K. B. N. S. 29, the plaintiff proved the delivery of the money to the defendant for the purpose of taking up a bill. The defendant was the proprietor of a coffee house, and the account he gave of the loss was that he unfortunately placed the money in a cash box which was kept in the taproom, and that the cash box with the plaintiff's money in it, and also a larger sum belonging to the defendant, was stolen from its place of deposit on a Sunday. Lord Chief Justice Denman, a very eminent and learned jurist, said in his charge it did not follow, from the defendant's having lost his own money, at the same time as the plaintiff's, that he had taken such care of the plaintiff's money as a reasonable and prudent man would ordinarily take of his own. The case is reported in 2 Ad. & El. 256 (111 Eng. Reprint, 99), where the action of the court in leaving the question, whether there had been culpable negligence, to the jury, was approved. See, also, Coggs *v.* Bernard, 2 Ld. Raym. 909 (92 Eng. Reprint, 107), 1 Smith, Lead. Cas. 199."